EXHIBIT M

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

UTILITIES DIVISION

CASE PROCESSING (TELECOMMUNICATIONS) SECTION

CASE NUMBER 02-0254-T-C
NORTH COUNTY COMMUNICATIONS

v.

VERIZON - WEST VIRGINIA

PREPARED REBUTTAL TESTIMONY OF

DANNIE L. WALKER, TECHNICAL ANALYST,

ON BEHALF OF THE STAFF OF THE

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

October 4, 2002

PO BOX 812, CHARLESTON, WV 25323

Public Service Commission of West Virginia

PREPARED DIRECT TESTIMONY OF: DANNIE L. WALKER, TECHNICAL ANALYST

Q1. STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

A1. My name is Dannie L. Walker. My business address is Public Service Commission of West Virginia, PO Box 812, Charleston, WV 25323.

Q2. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A2. By the Public Service Commission of West Virginia as a telecommunications Technical Analyst.

Q3. WHAT, IN BRIEF, ARE YOUR DUTIES?

A3. I generally assist and advise the Commission regarding most non-financial aspects of telecommunications utility regulation. I am active in case review, including participation in most types of formal cases which come before the WVPSC, and I work on complaints, both formal and informal, involving telephone companies. I am extensively active in matters regarding 9-1-1. I assist in the development and the revision of rules and regulations governing telecommunications carriers. I maintain a number of databases containing various types of information concerning the telecommunications industry in West Virginia. I participate in task force activity which deals with various and sundry issues facing the WVPSC, ranging from the advent of local service competition to wireless Enhanced 9-1-1 implementation and cost recovery.

Q4. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A4. I trained in the United States Army in radio transmitter repair. I graduated from

the University of Nebraska - Lincoln, in December, 1975, with a Bachelor of Science degree in electrical engineering. I have attended various utility regulatory seminars and classes and have received training in computer operation.

Q5. WHAT IS YOUR BACKGROUND IN PUBLIC UTILITY REGULATION?

A5. I worked for the Nebraska Public Service Commission, from February, 1976 to February, 1978, as a telecommunications engineer. My duties there involved much activity evaluating telephone quality of service. I also performed general regulatory duties such as tariff review, rate case evaluation and processing of subscriber complaints. I began working for the WVPSC in March, 1978. My initial duties here were similar to those at the NPSC and my responsibilities have steadily increased in my 24 years here in West Virginia.

Q6. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A6. The purpose of my testimony is to respond to the facts and assertions made by the parties in their pre-filed direct testimony. In particular, I intend to address the parties' claims regarding Verizon-WV's provisioning of CLEC interconnection facilities for NCC and the routing of 555 traffic between NCC and Verizon-WV. It is my understanding that the 500 issue raised in NCC's complaint has now been settled by the parties and that it is no longer before the Commission for resolution. Therefore, I will not address the testimony regarding the 500 issue.

Q7: WHAT IS STAFF'S POSITION REGARDING VERIZON-WV'S PROVISIONING OF INTERCONNECTION FACILITIES FOR NCC?

A7: Staff supports NCC's position that Verizon-WV should have timely accommodated NCC's original request to interconnect with Verizon-WV at the shared end user loop facility, or whatever the parties want to call it, at 405 Capitol Street.

Q8: CAN YOU ELABORATE ON THE BASIS FOR STAFF'S POSITION?

A8: Yes. Staff has a number of problems with Verizon-WV's response to NCC's request for interconnection, both initially and throughout the course of the parties' dealings.

As an initial matter, the source of Verizon-WV's legal obligation to interconnect with NCC should be addressed. Verizon-WV, as an incumbent LEC (ILEC) is obligated by the Telecommunications Act of 1996 to:

> [P]rovide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network —
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection;
>
> (D) on rates, terms, and conditions that are just, reasonable, and

nondiscriminatory, in accordance with the terms and conditions of the agreement [negotiated with the requested carrier] and the requirements of [47 U.S.C. §§ 251 and 252].

47 U.S.C. § 251(c)(2) (emphasis added). In Staff's opinion, Verizon-WV's unilateral refusal to interconnect where requested by NCC, coupled with the length of time and demands associated with the final interconnection with NCC, appear to violate the emphasized provisions of Section 251(c)(2) of TA96.

Q9: HOW DID VERIZON-WV'S REFUSAL TO INTERCONNECT AT THE 405 CAPITOL FACILITY VIOLATE ITS OBLIGATION TO INTERCONNECT AT "ANY TECHNICALLY FEASIBLE" POINT?

A9: Staff notes that the Federal Communications Commission (FCC) defined "technical feasibility" for purposes of an incumbent LEC's (ILEC) interconnection obligations under 47 U.S.C. § 251(c) in its initial order implementing the local competition requirements of the Telecommunications Act of 1996 (TA96). See "First Report and Order," In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, et al., FCC 96-325 (Rel. Aug. 8, 1996) (Local Competition 1st R&O). The FCC concluded that "technically feasible" refers "solely" to technical or operational concerns and that an ILEC's interconnection obligations included modifications of its facilities to the extent necessary to accommodate interconnection. Local Competition 1st R&O, at ¶ 198. Further, the FCC determined that ILECs must prove to the appropriate state

commission that a particular interconnection or access point is not technically feasible. Id.

Based on its review of the testimony, and the exhibits attached to the testimony, Staff believes that Verizon-WV unreasonably refused to interconnect with NCC at the end user loop facilities located at 405 Capitol Street, where interconnection was technically feasible. Instead, Verizon-WV wrongly insisted upon NCC either leasing dedicated interoffice facilities (IOF) – from either Verizon-WV or another carrier – or collocating in a Verizon-WV central office. Verizon-WV's demands, and NCC's submission to those demands, led to a 6-month long process to provision NCC's interconnection arrangement.

As Staff understands it, at the time of the initial interconnection meetings between the parties in January 2001, little or no traffic forecast information was provided to Verizon-WV by NCC. Thus, Verizon-WV cannot base its insistence on dedicated IOF on the volume of traffic expected to be provided over these facilities to and from NCC. As discussed below, Verizon-WV's assertion that CLEC entrance facilities uniformly involve massive volumes of traffic, far exceeding traffic volumes on end user facilities, and that this justified its refusal to accommodate NCC's interconnection request, is simply unsustainable.

Moreover, prior to the January 2001, interconnection initial meetings between the parties, NCC had apparently already attempted to order 2 T-1 trunks for interconnection. The end user loop facilities at 405 Capitol Street consisted of an OC-3 multiplexer (MUX). By all accounts, this MUX had the capacity to serve

84 T-1s – total – and this capacity was nowhere near exhaust when NCC requested interconnection at this facility. Clearly, Verizon-WV could have provisioned NCC's initial request for 2 T-1s from this facility in January 2001. In fact, Verizon-WV provisioned – and continues to provision -- 6 T-1s for NCC using this facility. Even now, according to NCC, there are 37 T-1s worth of capacity remaining on this facility.

It is clear that interconnection at this facility was and is technically feasible. For one thing, this is where Verizon-WV interconnected with NCC in July 2001. Moreover, this facility has served as an interconnection point ever since that time with no apparent adverse impact on Verizon-WV's network. Furthermore, it appears that NCC has interconnected with other regional Bell operating companies (RBOCs) at end user loop facilities in other states (4 in California with SBC, and 4 in Washington, Arizona and Oregon with Qwest, and now apparently with Verizon in Illinois). Finally, if Verizon-WV wished to base its refusal to interconnect using the end user loop facility on grounds of technical infeasibility, then it should have submitted that objection to the Commission and made a demonstration of the alleged technical infeasibility to the Commission. Verizon-WV never did so.

If NCC's interconnection needs could have been adequately served by the end user loop facility at 405 Capitol Street, then Verizon-WV should have provisioned NCC's request.

Q10: HOW DID VERIZON-WV REFUSE TO PROVIDE INTERCONNECTION "AT LEAST

EQUAL IN QUALITY" TO THAT PROVIDED TO ITSELF OR ANY OTHER PARTY TO WHICH IT PROVIDES INTERCONNECTION?

A10: In Staff's opinion, TA96 and the FCC's regulations implementing the Act requires Verizon-WV's provision of interconnection, including installation intervals, to be judged according to the installation intervals it provides to other carriers for interconnection and to its retail customers for the provision of retail services. On this point, Staff disagrees with Mr. Albert's suggestion that CLEC interconnection facilities -- referred to as IOF facilities in Mr. Albert's pre-filed direct testimony -- carry volumes of traffic far larger than end user local loops, at least as a general proposition. Mr. Albert's suggestion is certainly true when one is talking about the end user's local loop consisting of a copper pair over which "plain old telephone service" (POTS) is provided. However, the suggestion is definitely untrue when one is talking about large, typically business service, end users who require loops that carry large volumes of traffic. Such end users would include large businesses that receive and/or transmit large volumes of information in their day-to-day operations– BB&T, Dow, CAMC, Coldwater Creek, are good examples. Such end users' local loops most certainly are not copper pairs providing POTS; they are more likely fiber optic facilities with advanced electronics, much like the OC-3 MUX at 405 Capitol, and quite likely with far greater capacity than the facility at 405 Capitol.

Conversely, many CLECs may require interconnection and IOF facilities that carry smaller traffic volumes than those carried on large end user loop facilities. Some CLECs serve only several tens, or hundreds, of customers. The

interconnection and IOF facilities for such CLECs should be comparable, or even smaller, than the facilities serving many larger business end users in West Virginia. In short, Staff agrees with Mr. Dawson's observations, in his direct testimony, that a T-1 (a digital transmission link, with a total signaling speed of 1.544 Mbps) is a T-1, whether it is used for carrier-grade or customer-grade service. The same is true for the facilities involved in this proceeding – a DS-1, or DS-3, or OC-3 multiplexer – all provide the same capabilities regardless of whether the user of those facilities is an end user or a carrier.

The FCC has stated that its rules require an ILEC to provide interconnection to a CLEC in a manner no less efficient than the manner in which the ILEC provides the comparable function to its own retail operations. "Memorandum Opinion and Order," In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in New York, CC Docket No. 99-295, FCC 99-404 (Rel. Dec. 22, 1999) (NY 271 Order), at ¶ 65. According to the FCC, this obligation includes the ILEC's *installation interval for interconnection service* and its provisioning of two-way trunking arrangements. Id. In reaching these conclusions, the FCC cited to its original order implementing the local competition obligations of TA96. See Local Competition 1st R&O, at ¶¶ 217-19. In other words, this obligation has been spelled out for the past six years.

Staff has been unable to locate specific installation intervals applicable to Verizon-WV's retail operations for the facilities at issue in this proceeding.

However, Staff is confident that Verizon-WV almost always provisions its customers' service orders for such facilities in far less than six months, let alone one year. (If not, Staff would have been inundated with complaints regarding the phone company's dilatory behavior...that has not happened.) This at least is the experience NCC reports having with other RBOCs in other states, namely SBC and Qwest. Moreover, as noted in Mr. Dawson's testimony, Paragraph 4.3.3 of Attachment IV to the interconnection agreement opted into by NCC provides that the standard interval to provision local interconnection trunk groups is 10 days for orders less than 96 DS0 trunks. NCC initially ordered only 48 DS0s (2 T-1s).

Q11: ARE THERE ANY OTHER PROBLEMS STAFF HAS WITH VERIZON-WV'S "POLICY" OF REFUSING TO INTERCONNECT AT END USER LOOP FACILITIES?

A11: Yes. Staff believes that the cost associated with build outs of new infrastructure in response to every CLEC request to interconnect is unnecessary, and that a more cost effective – certainly less time-consuming – alternative is to allow CLECs to interconnect at end user loop facilities where sufficient capacity exists. In Staff's opinion, this would hold true even if Verizon-WV had to modify the end user facilities in order to accommodate the CLEC's forecasted traffic. This is consistent with the FCC's conclusion that the obligations imposed on ILECs pursuant to 47 U.S.C. §§ 251(c)(2) and 251(c)(3) include modifications to ILEC facilities to the extent necessary to accommodate interconnection or access to network elements.

Local Competition 1st R&O, at ¶ 198.

Q12: DOES STAFF HAVE ANY OTHER PROBLEMS WITH VERIZON-WV'S RESPONSE TO NCC'S INTERCONNECTION REQUEST?

A12. Yes. Staff is troubled by the delay NCC experienced in getting its interconnection request provisioned by Verizon-WV. Apparently, NCC experienced significant delays getting its initial paperwork processed to even opt into an interconnection agreement previously approved by the Commission. The company first requested to opt into the MCI interconnection agreement with Verizon-WV, approved by the Commission in Case No. 97-1210-T-PC, pursuant to 47 U.S.C. § 252(i), on July 5, 2000. A form adoption letter was not sent to NCC until nearly 2 months later. Then Verizon-WV requested NCC to complete and return a "customer profile" to Verizon-WV. Although NCC sent the profile back to Verizon-WV on August 18, 2000, and re-sent it on several subsequent occasions, NCC received no response from Verizon-WV until January 17, 2001, when Verizon-WV e-mailed concerns about the profile back to NCC. The "customer profile" process was not completed until on or about January 21, 2001 – over 6 months after NCC sought to opt into the MCI agreement.

The delay NCC experienced did not end there. At least 2 conference calls were required, during which time Verizon-WV insisted on a traffic forecast before any facilities would be provisioned. NCC provided this forecast to Verizon-WV in March 2001, yet it was not until July 2001 – 4 months later – that Verizon-WV finally

completed its dedicated IOF interconnection facility.

In Staff's opinion, this process took entirely too much time for Verizon-WV to complete. A year elapsed between the date NCC sought to opt into the Commission-approved MCI agreement and the date its interconnection facility was provisioned by Verizon-WV. Such a lengthy process is inconsistent with the concept of a competitive local marketplace, free from barriers to entry. It appears to Staff that Verizon-WV, consciously or unconsciously, used its monopoly position in the local marketplace in West Virginia to obstruct and delay a potential competitor's entry into that marketplace.

In addition, Staff is troubled by Verizon-WV's unilateral adoption of apparently unwritten policies, such as the one involved in this proceeding, i.e., the refusal to interconnect with CLECs at end user loop facilities where sufficient capacity exists.

Q13: DOES STAFF FIND ANY FAULT WITH NCC'S COURSE OF CONDUCT IN CONNECTION WITH ITS INTERCONNECTION REQUEST?

A13: Yes. Staff has problems with NCC's failure to avail itself of Commission intervention earlier than February 22, 2002, when it filed its complaint. It is clear from Mr. Lesser's testimony that NCC was frustrated, over the course of many months, with the slow pace of Verizon-WV's provisioning of its interconnection facilities and felt that Verizon-WV was in violation of the FCC's rules and regulations implementing TA96, as well as provisions of its interconnection

agreement with Verizon-WV. NCC even had legal counsel heavily involved in its interconnection request dealings with Verizon-WV. Yet, inexplicably, NCC did not, until late in the game, bring this matter to the Commission's attention, or even Staff's attention, in an effort to timely resolve this matter. Staff believes that it could have resolved many of the problems NCC experienced if it had been involved in the process early on.

Q14: WHAT IS STAFF'S POSITION REGARDING ROUTING OF 555 TRAFFIC TO NCC?

A14: Staff believes that NCC's position is the correct one. They make a compelling case that 555 traffic should be treated as local traffic and not subject to the access provisions of non-local traffic. Verizon-WV has not convinced me that there are any technical reasons why NCC's requested treatment of 555 calls should not be accommodated by the ILEC.

Q15: IS IT POSSIBLE THAT VERIZON-WV WOULD BE SUBJECTED TO UNFAVORABLE REVENUE TREATMENT IF NCC PREVAILS REGARDING THE 555 ISSUE?

A15: Yes. One of the uses for 555 calling is for reaching ISPs' gateways to the Internet. This constitutes one-way calling and could result in Verizon-WV paying much more than it receives regarding calls to a given ISP.

Q16: IS THIS ADEQUATE REASON TO SUBJECT 555 SERVICE ARRANGEMENTS TO THE REQUIREMENTS OF ACCESS SERVICE?

A16: No. Telephone service should be provided in a manner which makes technical, operational and administrative sense regarding the type service that is involved. Consistency and equality are important and, in fact, are required by federal and state laws as well as the Commissions rules. No one has denied that 555 service is a type of local service and, thus, it should be dealt with as local service. If treating it as such when CLEC interconnection arrangements are involved causes an ILEC financial duress, the ILEC should come to the Commission for appropriate relief, such as occurred with regard to the establishment of a 3:1 cap on reciprocal compensation to limit Internet arbitrage of ILEC reciprocal compensation obligations. See "Commission Order," Bell Atlantic-WV, Case No. 99-0426-T-P (Oct. 19, 1999). The Commission has adequate authority to assure fair and equal treatment of ILECs regarding vagaries of interconnection arrangements and has demonstrated its willingness to do so when good cause for such is shown.

Q17: DOES THIS CONCLUDE YOUR TESTIMONY?

A17: Yes it does.